

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
) Charge Nos.: 2004CF2420, 2004CF2419
LIGIA P. MORAD and MALIDIA ZUNIGA,) EEOC Nos.: 21BA41287, 21BA41286
Complainants,) ALS No.: 05-068C
and)
)
BOARD OF EDUCATION OF)
THE CITY OF CHICAGO,)
Respondent.)

RECOMMENDED ORDER AND DECISION

On February 18, 2005, the Illinois Department of Human Rights filed two separate complaints, one on behalf of Complainant, Ligia Morad, and one on behalf of Complainant, Maria Zuniga. Both complaints were consolidated by order of the Chief Administrative Law Judge on January 20, 2006. A public hearing on the merits was held on June 3, 4, 5, 6 and 10, 2008. The matter is ready for a decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter and is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Complainants contend that Respondent illegally harassed them based on ancestry/national origin and discharged them in retaliation for complaining about discrimination.

Respondent denies that it subjected Complainants to harassment and further maintains that it discharged Complainants for legitimate non-discriminatory reasons.

FINDINGS OF FACT

The following facts were determined to have been proven by a preponderance of the evidence. Assertions made at the public hearing that are not addressed herein were determined to be unproven or immaterial to this decision.

1. The Illinois Department of Human Rights (Department) filed a Complaint on behalf of Complainant, Ligia P. Morad, with the Illinois Human Rights Commission (Commission) on

February 18, 2005. The Complaint was based on the underlying Charge Number 2004CF2420 filed with the Department on February 25, 2004. The Department filed a motion for leave to file a first amended complaint on behalf of Morad on March 28, 2007, which was granted on April 25, 2007. Morad's operative Complaint alleges retaliatory discharge and harassment based on ancestry/national origin, Colombian.

2. The Department filed a Complaint on behalf of Complainant, Maria Zuniga, with the Commission on February 18, 2005. The Complaint was based on the underlying Charge Number 2004CF2419 filed with the Department on February 25, 2004. On May 24, 2005, the Department filed a motion for leave to file a first amended complaint, which was granted on June 29, 2005. The Department filed a motion for leave to file a second amended complaint on November 2, 2006, which was granted on December 12, 2006. Zuniga's operative Complaint alleges retaliatory discharge and harassment based on national origin, Mexico.
3. Both Complaints were consolidated by order of the Chief Administrative Law Judge on January 20, 2006.
4. Morad is Colombian and speaks Spanish. Morad's middle name is Patricia and she is referred to by Patricia. Morad understands and speaks English only at a basic level. Morad's daughters attended Respondent Northwest Middle School (hereinafter referred to as Respondent or school).
5. Morad was a volunteer teacher's assistant for the school between 2001 and 2002. In that capacity, Morad worked four hours per day assisting in the sixth grade special education classes. Initially, Morad was not paid, but she began receiving pay for the teacher's assistant position when the school later began receiving government money to fund the program.
6. Around February, 2003, Morad began working at the school as a probationary lunchroom attendant at a salary of \$8.50 an hour. Morad's job duties included washing dishes, getting

the lunchroom line ready for the lunch hour, preparing salads, fruits and breads, getting the napkins and eating utensils ready, cleaning counters and getting the lunchroom foods ready for the next day.

7. Zuniga was born in Mexico, speaks Spanish and does not speak English. Beginning in 1999, Zuniga worked for as a volunteer street crossing attendant for the school. Zuniga had a child who attended the school. Zuniga's duties as a crossing attendant were to assist students with crossing the street safely. As a volunteer, Zuniga was not paid for that position.
8. On January 29, 2003, Zuniga began working at the school as a probationary lunchroom attendant at a salary of \$8.53 per hour. Zuniga's job duties included preparing the bread, washing the fruit, putting the condiments in place, serving food to students as they came through the lunchroom line and cleaning the food area. Zuniga's work hours were from 8:00 a.m. until 1:00 p.m. every school day.
9. Annie Camacho is Puerto Rican and became principal of the school when it first opened in 1999 and remained principal until 2004. Camacho has a doctorate in education and is fluent in English and Spanish.
10. During the 2003-2004 school year, the student population at the school was predominantly Hispanic and the school had a large population of Mexican students.
11. Camacho first met Morad and Zuniga in 1999 as they each registered their children at the school. It was at that time that she became aware that Morad was Colombian, Zuniga was Mexican, and that neither of them spoke English fluently.
12. Camacho considered Morad as a supporter of hers and as a supporter of the school and believed Morad to be the kind of volunteer who would assist the school with anything that the school needed. Camacho selected Morad to perform services as a volunteer teacher's assistant for the school sometime between 2001 and 2002. In that capacity, Morad worked four hours per day assisting in the sixth grade special education classes. In recognition of

Morad's services, Camacho gave Morad a Project Assistant Award in 2001. In January 2003, Camacho offered Morad a paid position as a lunchroom attendant.

13. The school did not have a local school council its first year. During its second year, Zuniga became a member of the school's local school council. Camacho considered Zuniga a big supporter of hers at that time because Zuniga assisted in recruiting parents to help Camacho with her contract. In January, 2003, Camacho offered Zuniga a paid position as a lunchroom attendant.

14. Camacho was aware that neither Morad nor Zuniga spoke English very well when she first hired them, but she felt that they were viable members of the school and that they were very helpful, so Camacho was willing to translate for them so that they would understand what was going on.

15. Margaret Santiago (Santiago), referred to as Maggie, was born in Chicago and is non-Hispanic. Santiago is her married name. At the time of this public hearing, Santiago was divorced. Her ex-husband's name is Hector Santiago and he is Puerto Rican. The Santiagos have two children together who are half Puerto Rican. Santiago speaks English and has some proficiency in Spanish. Santiago speaks Spanish at 80% proficiency, can read Spanish a little, but cannot write Spanish. Santiago was the lunchroom manager for the school at all relevant times. Santiago's duties as lunchroom manager included ordering food, training lunchroom personnel to serve food and take temperatures and making sure cafeteria staff performed their job duties. Santiago was Morad's and Luniga's immediate supervisor. Santiago reported directly to Camacho.

16. At all relevant times, in addition to Santiago, Morad, and Zuniga, the lunchroom staff included the cook, Michelle Carwell, African American; three lunchroom attendants: Stephanie Booker, African American, Maria Solis, who was born in Mexico and has since become a U.S. citizen, and Maria Carmen McFarlin, Honduran; one porter, Matthew Hiles, African American. (Although referred elsewhere in the record as Hills or Hill, he testified at

public hearing that his name is Matthew Hiles, and he is referred to as such in this decision.)

17. When Santiago trained Morad and Zuniga, she spoke to them in Spanish because she believed they would understand her better if she spoke in Spanish. Santiago spoke to Morad and Zuniga in Spanish in the workplace because she believed neither of them understood English well. When asking questions of Santiago in the workplace, Morad and Zuniga asked the questions in Spanish.
18. Between September, 2003, and December, 2003, Camacho heard a complaint from either Santiago, Morad, or Zuniga that Morad and Zuniga felt they could not speak Spanish in the workplace. Camacho addressed this concern by explaining to Morad and Zuniga that she was aware that they did not speak English well and yet she still chose to hire them.
19. Neither Santiago nor Camacho ever told Morad or Zuniga not to speak Spanish in the workplace.
20. On October 14, 2003, Santiago spoke to Zuniga while she was in the lunchroom line serving lunch. While serving nachos to the students, Santiago observed Zuniga placing the meat on the side of the nachos and Santiago told Zuniga that the meat was to be placed on top of the nachos. Zuniga had been placing the meat on the side of the nachos because the students did not want the meat to be placed on top of the nachos.
21. On October 15, 2003, Santiago spoke to Zuniga in the lunchroom and asked her why she failed to serve the students sausage with the breakfast. Zuniga told Santiago that she did not see the sausage, apologized and told Santiago that it would not happen again. Santiago was forced to throw the sausage away because Zuniga had failed to serve it.
22. On October 17, 2003, Zuniga reported to Santiago that the french fries that were to be served to the students were raw. Santiago took the temperature of the fries, determined that they were fine and ordered Zuniga to serve them. Zuniga then got smart with Carwell and said she was going to speak with Camacho.

23. On October 20, 2003, Santiago spoke to Zuniga again about failing to put the meat for the nachos on the tray being served to the students. Zuniga responded that the kids did not like the meat. Santiago told her that the meat must be on the tray. When Santiago walked away, she noticed that Zuniga continued to serve the nachos without putting the meat on the tray.
24. On October 21, 2003, Carwell, Hiles, Booker and McFarlin reported to Santiago that Zuniga had tipped over a bottle containing water and the thermometer and did not clean it up. Booker began wiping up the water and left to retrieve more towels to finish the clean-up and Solis walked by and slipped on the wet floor. Solis was injured and her injuries required that an ambulance be called. Zuniga denied to Santiago that she spilled the water.
25. Camacho was summoned after Solis slipped on the water and she arrived to the lunchroom and stayed with Solis until the ambulance arrived. Although Zuniga denied she spilled the water, Camacho spoke to the other lunchroom workers, who confirmed to Camacho that Zuniga had spilled the water and had not cleaned it up. Camacho believed this to be a major incident.
26. On November 25, 2003, a student in room 010 reported to Santiago that Zuniga had called him a "smart ass" and a second student in room 010, who was standing behind the first student, confirmed the report. Santiago asked Zuniga about the accusation and Zuniga denied that she made the remark to the student.
27. On December 12, 2003, while Zuniga was in the lunchroom line serving lunch, Santiago observed Zuniga serving six or seven chicken nuggets to the students. Santiago advised Zuniga to serve only five chicken nuggets. Within a half hour later, Santiago observed that Zuniga was continuing to serve more than five chicken nuggets and again spoke to Zuniga about serving too many chicken nuggets.
28. Santiago drafted seven conduct reports concerning conduct by Zuniga and gave the reports to Camacho. The reports were dated October 14, 2003 (failure to serve the meat

with the nachos); October 15, 2003 (failure to serve the breakfast sausage); October 17, 2003 (failure to serve the french fries); October 20, 2003 (failure to serve the meat with the nachos); October 21, 2003 (spilling the water and failing to clean it up); November 25, 2003 (calling a student a "smart ass"); and December 2, 2003 (failing to serve the proper amount of chicken nuggets).

29. Santiago believed that Zuniga did not want anyone to give her directions and believed Zuniga purposely performed her duties slowly so that she would not be able to complete specific job duties.
30. On May 2, 2003, Morad spoke to Santiago about being treated unfairly in dishwashing assignments. She asked Santiago if it was a rule that the Spanish lunchroom workers had to wash dishes when they collected tickets, but the black women lunchroom workers did not have to wash dishes when they collected tickets. Santiago responded that there was no such rule.
31. On September 11, 2003, Morad told Santiago that all the black people she knew were lazy. Santiago annotated this occurrence in her work calendar. Santiago told Morad that the comment was inappropriate and Morad apologized.
32. On September 12, 2003, Morad was engaged in an argument with Solis, which began in the kitchen and moved to Santiago's office. While in Santiago's office, Santiago heard Morad use a curse word toward Solis and observed Morad move toward Solis in a manner which made Santiago believe Morad was going to hit Solis. Solis began crying. Santiago told Morad that she needed to calm down and relax. Morad responded by saying that she has balls and that she is not afraid of anyone. Santiago believed that Morad had started the altercation. Solis went to Camacho's office to report the argument to Camacho.
33. Santiago drafted three conduct reports concerning conduct by Morad that she gave to Camacho. One report was dated September 12, 2003, and memorialized the argument Morad had with Solis on that day. The second report was dated September 23, 2003, and

memorialized an occurrence where Morad and Hiles got into an argument when a teacher asked Morad for directions to a classroom and Solis and Hiles began laughing because Morad did not know where the classroom was. Morad became angry and told Solis and Hiles that they were disrespecting her and also began telling McFarlin that she was disrespecting her. Santiago noted that she spoke to everyone who was involved in the occurrence and that she told Morad that she was getting upset about nothing and that she was disrupting the work area with her attitude and that her conduct will not be tolerated. The third report was dated December 2, 2003, and memorialized an occurrence in which Hiles had noticed the walk-in cooler door was open and closed it. Morad was inside the cooler and began screaming and Hiles opened the door. Morad believed Hiles had been aware she was inside the cooler and that he deliberately closed the door with her inside. Santiago also noted in the conduct report that when Morad was punching out her time card for the day, Morad told Santiago that Morad's husband has an urge to see Hiles to show him how to treat a woman.

34. Santiago believed Morad to be a good worker, but had a problem with Morad's attitude and with Morad being engaged in arguments.
35. Santiago never heard any lunchroom employee use offensive language towards any other lunchroom employee regarding national origin in the workplace.
36. Camacho never heard any lunchroom employee use offensive language towards any other lunchroom employee regarding national origin in the workplace.
37. No students or parents ever complained to Camacho that they heard any of the lunchroom staff make derogatory comments about Mexico or Mexican people.
38. Neither Zuniga nor Morad ever complained to Santiago or Camacho that any of the lunchroom employees were making offensive comments about their national origin.
39. Maria Solis began working as a lunchroom attendant for the school in 2000. Solis was born in Mexico and later became a U.S. citizen. Solis does not speak English and only speaks

Spanish in the workplace. On October 21, 2003, Solis had a workplace accident and has been on medical leave from work since then. Solis never heard any lunchroom employees say any derogatory remarks in the workplace about Zuniga or Morad's national origin. Solis would have been offended if she heard anyone make any derogatory remarks about Mexicans because she is Mexican. No one ever told Solis not to speak Spanish in the workplace. Solis would argue with Carwell, but she did not feel the arguments were motivated by race and did not feel offended. Solis believed there was tension in the lunchroom that was caused by Zuniga and Morad arguing. Solis heard Morad and Zuniga make comments that the black lunchroom employees were lazy and did not want to work.

40. On November 3, 2003, there was an incident in the lunchroom in which Morad, Carwell and Booker were engaged in an argument. Camacho issued Morad a memorandum dated November 4, 2003, for inappropriate conduct stemming from the altercation. Camacho gave Morad two copies of the memorandum – one in English and one in Spanish – to ensure that Morad understood it. Camacho indicated in the memorandum that Morad was disrespectful to her in insinuating that Camacho was taking sides and because Morad raised her voice to Camacho. Camacho advised that if she did not see improvement immediately, she would be inclined to dismiss Morad from her position.
41. Camacho also issued a memorandum for inappropriate conduct concerning the November 3, 2003, altercation to Booker, Carwell, and Hiles.
42. Camacho believed that Morad was always engaged in noticing what other employees were doing and that Morad had problems with personal relationships with the other lunchroom employees. Camacho also believed that Morad did not respect Santiago and that Morad had a problem with Hiles because Morad believed Hiles talked disrespectfully to her.
43. Camacho believed that after Morad and Zuniga began working in the lunchroom, the lunchroom environment had changed so that there was a tension that had not been there before.

44. Morad filed a grievance with the union representing her as an employee on December 10, 2003 and stated the nature of the grievance to be "Discriminacion laboral-abuso; verbal-discriminacion pro raza y sexo."
45. Zuniga filed a grievance with the same union on December 10, 2003 stating the nature of the grievance as "Discrimination, treated unfairly!"
46. A meeting was held in Camacho's office on January 6, 2004, to address the allegations in the grievances filed with the union by Morad and Zuniga. In attendance at the meeting were Morad; Zuniga; Camacho; Santiago; John O'Gara, union representative for Zuniga and Morad; and Timothy P. Healy, union representative for Santiago. During the meeting, Camacho was puzzled about the grievance charges and asked Morad and Zuniga how they could accuse her of gender and racial discrimination since she herself is Hispanic as they are Hispanic and that she is a woman just as they are women. Camacho also reminded them that she was the one who employed them and sought them out for their assistance and their help. Camacho believed the allegations to be absurd.
47. Neither Morad nor Zuniga voiced any concerns in the January 6, 2004, meeting that they were being called derogatory names by lunchroom staff because of their national origin or that Carwell had been pushing Zuniga while she distributed tickets in the lunchroom line.
48. On January 9, 2004, Camacho recommended to Respondent's labor department that Morad and Zuniga be discharged and both were subsequently discharged. Camacho listed as the reasons for her recommendation that each had exhibited consistent episodes of failing to follow directives and creating an unpleasant work environment for the other lunchroom employees and each had disrupted the orderly process of the lunchroom.
49. None of the lunchroom employees made derogatory remarks about Morad's or Zuniga's ancestry/national origin in the workplace. Carwell did not push Zuniga once a week while Zuniga gave tickets to the students in the lunchroom.
50. Complainants failed to prove Respondent's articulated reason for discharge was pretext.

CONCLUSIONS OF LAW

1. Complainants are employees and Respondent is an employer as defined by the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* at sections 5/2-101(A)(1)(a) and 5/2-101(B)(1)(a), respectively.
2. The Commission has jurisdiction over the parties and subject matter of this action.
3. Complainants failed to prove they were subjected to harassment based on their ancestry/national origin.
4. Complainants proved a *prima facie* case of retaliation.
5. Respondent articulated a legitimate, non-discriminatory reason for discharging Complainants.

DETERMINATION

Complainants have failed to prove by a preponderance of the evidence that Respondent subjected them to harassment based on ancestry/national origin or that Respondent discharged them in retaliation for opposing illegal discrimination.

DISCUSSION

Complainants allege that Respondent illegally harassed them based on ancestry/national origin and discharged them in retaliation for complaining about discrimination.

A Complainant bears the burden of proving discrimination by the preponderance of the evidence. Section 5/8A -102 (I) (1) of the Act. That burden may be satisfied by direct evidence that adverse action was taken for impermissible reasons or through indirect evidence in accordance with the method set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 793, 93 S.Ct 1817 (1973), and *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct 1089 (1981). This method of proof has been approved by the Illinois Supreme Court and adopted by the Commission in *Zaderaka v. Illinois Human Rights Commission*, 131 Ill.2d 172, 545 N.E.2d 684 (1989).

Under this three-step approach, a complainant must first establish a *prima facie* case of unlawful discrimination. Then, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its adverse action. Once the respondent successfully makes this articulation, the presumption of unlawful discrimination drops and the complainant is required to prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for unlawful discrimination.

Harassment based on national origin

This Commission has previously held that racial harassment is the result of a hostile working environment in which racially charged verbal or non-verbal behavior is directed toward an employee. This harassment becomes an adverse term or condition of employment for the employee and this constitutes unlawful discrimination. Harassment is a *per se* violation and requires direct evidence of the alleged discriminatory act. *Crider and Illinois Department of Veterans' Affairs*, IHRC, ALS No. 1022(Y), July 24, 1986 and *Hill and Peabody Coal Co.* IHRC, ALS No. 6895(S), June 26, 1996. Harassment on the basis of national origin also has been held to be a *per se* violation of the Act. *Rys and Palka and ISS Int'l Service System, Inc.*, IHRC, ALS No. 2668, March 13, 1992, *aff'd sub nom ISS Int'l Service System, Inc. v. Illinois Human Rights Commission*, 272 Ill.App.3d 969, 651 N.E.2d 592 (1st Dist. 1995). The Commission's interpretative rules regarding national origin discrimination provide that ethnic slurs and other verbal conduct relating to an individual's national origin constitute harassment when this conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment. 56 Ill. Adm. Code, Ch. XI, Section 5220.900(b)(1)(1986).

In order to prevail on such a claim, Complainants here must prove that they were harassed on the basis of their respective national origins and that the harassment was so severe or pervasive that it altered the conditions of their employment and created an abusive environment. See, for example, *Hu and Allstate Insurance Co.*, IHRC, ALS No. 6082, June 16,

1995. Both Complainants attempt to prove harassment by putting forth direct evidence of derogatory statements being made in the workplace about their respective national origins.

Morad

Morad alleges that she was a victim of harassment on the basis of her national origin — Colombian. Morad testified that she was subjected to the following conduct based on her national origin: on her first day of working in the lunchroom in March, 2003, McFarlin told the other lunchroom workers to be careful with Morad because Morad was Colombian and if Morad became angry she could kill people; in response to her talking about going on vacation to visit Colombia, Hiles, Carwell and Santiago all commented that the only good thing in Colombia was cocaine, the war and neck bombs, and Hiles asked Morad to bring him back a little package of cocaine; Hiles called Morad stupid and noisy; Carwell, Hiles, and McFarlin told Morad that the only thing they hear about Colombia is about narcotics and that Colombians were dangerous people; Carwell, Hiles, and McFarlin asked Morad why were she and Zuniga in the U.S. when didn't know how to speak English; Carwell, Hiles and McFarlin told Morad that this was their country.

Morad testified that these comments were made on a regular basis in the workplace in the presence of all of the cafeteria workers, including Carwell, Booker, Solis, McFarlin, Hiles and Santiago. Morad further testified that Santiago harassed her by telling her not to speak Spanish in the workplace. Morad said she reported these statements to Santiago and Camacho, who did nothing to stop the harassment.

Zuniga

Zuniga alleges that she was a victim of harassment on the basis of her national origin — Mexican. Zuniga testified that Carwell constantly called her “stupid Mexican” as much as two or three times a week in the cafeteria; that Carwell told her that Mexicans should go back to their country; that Carwell asked her why did she come to the United States if she doesn't speak English; that Carwell pushed her once a week while Zuniga gave out tickets to the students in

the lunch line; and that Carwell said that Mexicans come to the U.S. to be supported by the government. Zuniga said that Carwell made these comments constantly in the cafeteria in the presence of Morad, Stephanie, McFarlin, and Solis.

Zuniga said that she reported these comments to Santiago, whose response was that Michelle was just playing and who did nothing to stop the harassment. Zuniga testified that she reported to Santiago that Carwell pushed her every week and Santiago did nothing to stop Carwell's conduct. Zuniga also testified that Santiago engaged in harassment when she told Zuniga not to speak Spanish at the workplace.

It cannot be said that if Morad and Zuniga were subjected to such comments on a regular basis in the workplace, that such action would not be violative of the Act. (For example, see *Smith and Cook County Sheriff*, IHRC, ALS 1077(RRP), Oct. 31, 2005, where the Commission said that a barrage of derogatory racial slurs made to an employee on a daily basis constitutes illegal discrimination.) However, I find Morad's and Zuniga's account of the alleged harassing environment in the workplace not credible for the following reasons.

First, I heard testimony from five of the remaining six lunchroom employees, including Carwell, Solis, McFarlin, Hiles and Santiago, who is the lunchroom manager, and each testified that he or she never heard any such comments regarding the national origin of Morad or Zuniga in the workplace.

Second, I especially considered the credible testimony of Solis, who began working as a lunchroom attendant for the school in 2000. Solis was born in Mexico and later became a U.S. citizen. Solis does not speak English and only speaks Spanish. On October 21, 2003, Solis had a workplace accident and has been on medical leave from work since that time. Solis testified that she never heard any lunchroom employees say any derogatory remarks in the workplace about Morad's or Zuniga's national origin. Solis specifically said that she would have been personally offended if she had heard anyone make any derogatory remarks about Zuniga's Mexican ancestry because Solis herself is Mexican. Solis testified that, although she would

argue with Carwell in the workplace, she did not feel the arguments were motivated by race and she did not feel offended. Solis believed there was tension in the lunchroom that was caused by Morad and Zuniga arguing.

Third, I considered Solis's credible testimony that she heard Morad and Zuniga make comments that the black lunchroom employees were lazy and did not want to work. Solis said that Morad and Zuniga were referring to Carwell, Hiles, and Booker, when they made this comment. Although there was no corroboration in the record that Zuniga, specifically, made this comment, Solis's testimony that Morad made this comment was corroborated by Santiago, who testified that, on September 11, 2003, Morad told her that all the black people she knew were lazy. Santiago's recount of this statement by Morad was further evidenced by a contemporaneous annotation Santiago made in her work calendar memorializing this occurrence. Santiago testified that she told Morad that the comment was inappropriate and that Morad apologized.

Fourth, I considered the credible testimony of McFarlin, who was born in Honduras, Central America. McFarlin testified that she never heard any of the alleged derogatory statements in the workplace regarding Morad's or Zuniga's national origin. However, McFarlin testified that she recalled a discussion in the workplace among Santiago, Carwell, Booker, Hiles, Morad and herself about the conditions in Colombia. McFarlin said that the discussion was prompted by Morad's announcement that she intended to travel home to Colombia for a vacation. McFarlin said that she told Morad that her own son-in-law and his family were from Colombia and that they had informed McFarlin how bad the drug situation in Colombia was. McFarlin said that during this discussion she commented that she had read in the newspaper that there was a school in Colombia that teaches Colombians how to rob people.

Next, I also considered that Camacho credibly testified that the school was predominantly Hispanic and Mexican and that no students or parents ever reported to her that they heard any lunchroom staff making derogatory comments about the national origin of any

Hispanic employees. Camacho further credibly testified that it is her practice to deal with serious complaints immediately and that she never received any complaints that derogatory comments were being made regarding national origin in the workplace.

Moreover, in light of Santiago's credible testimony that she corrected Morad when Morad made a comment that she believed black people were lazy, I find it difficult to believe that Santiago would not have had a similar reaction if she heard or had been made aware that other lunchroom employees were making derogatory comments about the national origin of Morad or Zuniga. Similarly, in light of McFarlin's credible testimony that her son-in-law and his family were from Colombia, I find it difficult to believe that McFarlin would not have been offended had she been aware that lunchroom staff were making derogatory remarks about Morad's Colombian ancestry. Furthermore, in light of Solis's credible testimony that she is Mexican and would have been offended had she heard any derogatory comments about Zuniga's Mexican ancestry, I find it difficult to conclude that such comments were being made regularly, if at all, in the workplace.

As to Zuniga's allegations that Carwell pushed her once a week, this allegation also has no support in the record. Notwithstanding that Carwell directly denied this allegation, I heard from McFarlin on this issue, who testified that she never observed Carwell push Zuniga in the workplace, and I heard from Hiles on this issue, who testified that he never observed Carwell push Zuniga in the workplace. Also, Santiago credibly testified that Zuniga did not voice any concern about being pushed by Carwell during the union grievance meeting on January 6, 2004.

I heard from five of the six remaining lunchroom staff members (excluding both Complainants) and the evidence here simply fails to support that the workplace was permeated with derogatory comments about the Colombian national origin of Morad or the Mexican national origin of Zuniga. To find otherwise, I would have to find that the five lunchroom staff members, which included Carwell, an African American; Solis, a Mexican-born U.S. citizen; McFarlin, a Honduran national, whose son-in-law is from Colombia; Hiles, an African American;

and Santiago, a non-black U.S. citizen who was previously married to a Puerto Rican national and whose children are one-half Puerto Rican, all conspired in a cover-up. There is nothing in this record to justify such a conclusion.

As to Morad's and Zuniga's testimony that Santiago directed them not to speak Spanish in the workplace, I find this allegation bordering on the absurd and woefully lacking in support from the record. I considered Solis's credible testimony that she does not speak English and that she only speaks Spanish and that Spanish was the only language she spoke in the school. Solis further said that no one ever told her not to speak Spanish in the workplace and that she never heard anyone tell any of the lunchroom employees that they could not speak Spanish. McFarlin similarly testified that she spoke Spanish in the workplace, that no one ever told her not to speak Spanish in the workplace and that she never heard anyone tell any of the lunchroom employees that they could not speak Spanish.

I also considered Santiago's credible testimony that she, herself, spoke Spanish to both Complainants in the workplace because she knew that neither of them understood English very well. Further weighing against Morad's and Zuniga's testimony that they were forbidden to speak Spanish in the workplace is Camacho's testimony that she hired Zuniga and Morad with full knowledge that each had limited English-speaking ability. I also note that Camacho's November 4, 2003, letter to Morad concerning inappropriate conduct was written in English and Spanish and Camacho testified that she wrote the Spanish translation to ensure that Morad understood what she was saying.

There is no evidence whatsoever in this record that supports the Complainants' allegations that either Santiago or Camacho forbid Morad or Zuniga to speak Spanish – the only language each is proficient in – in the workplace.

Retaliation

Both Complainants allege that Camacho discharged them in retaliation for having complained of what they each believed to be illegal discrimination. In order to prove they were

subjected to illegal retaliation, Complainants must use the three step approach as set out in *McDonnell Douglas Corp. v. Green*, *supra*, and *Texas Dept. of Community Affairs v. Burdine*, *supra*.

Under this three-step approach, Complainant must first prove a *prima facie* case of retaliation. To establish a *prima facie* case of retaliation, each Complainant must prove three elements: 1) that she engaged in a protected activity, 2) that Respondent took an adverse action against her, and 3) that there was a causal nexus between the protected activity and Respondent's adverse action. *Carter Coal Co. v. Human Rights Commission*, 261 Ill.App.3d 1, 633 N.E.2d 202 (5th Dist. 1994).

Both Complainants have sufficiently established the first element of their *prima facie* cases. Although the evidence put forth by Complainants attempting to establish that they were subjected to a hostile environment based on their national origin has been shown not to be credible, there is credible evidence in the record establishing that both Complainants complained of discrimination in their union grievances filed on December 10, 2003. As both of the written grievances mentioned the term *discrimination*, this sufficiently puts Respondent on notice that Complainants complained of what they believed to be illegal discrimination. For the second element, Complainants were obviously subjected to an adverse employment action when they were discharged by Camacho on January 9, 2009.

For the third element, a causal connection can be established by showing that there was a relatively short time span between the protected activity and the adverse action. *Ellis and Brunswick Corp.*, IHRC, ALS No. 1394(RRP), March 30, 1987. The facts here establish that Camacho received the grievance on December 15, 2003, and discharged the Complainants 22 days later, on January 9, 2004. This relatively short time span is sufficient to establish a causal nexus. Complainants have sufficiently demonstrated a *prima facie* case of retaliation.

Next, Respondent must put forth a legitimate non-discriminatory reason for discharging Complainants. Camacho testified that she discharged Complainants because they each had

exhibited consistent episodes of failing to follow Santiago's directives, they each were creating an unpleasant work environment for the other lunchroom employees, and they each had disrupted the orderly process of the lunchroom.

Following Respondent's articulation, Complainants must prove that Respondent's proffered reasons for discharging them were pretext for unlawful retaliation. Here, the focus must be on what motivated Camacho to discharge the Complainants.

I find the facts in this record to weigh heavily in favor of Camacho's credible testimony that she discharged both Complainants because of their negative influence on the atmosphere in the lunchroom. Camacho testified that, after she hired both Complainants as lunchroom attendants, their conduct created a tense work environment for the lunchroom staff. Camacho said that the lunchroom had normally run well and had never required this kind of supervision; that the lunchroom environment had changed; and that there was a tension in the lunchroom that she had not had before. Camacho further testified that she had been given several employee conduct reports compiled by Santiago indicating that both Complainants were not following Santiago's directives. Camacho was also visibly upset when she testified as to the November 4, 2003, incident that involved Morad, which Camacho characterized as so serious that it shut down the lunchroom. Moreover, despite Zuniga's denials, Camacho believed that Zuniga was responsible for spilling the water that caused Solis to become seriously injured and resulted in Solis going on a long-term medical leave.

What I also find persuasive on the issue of pretext is the evidence regarding the relationship of Camacho with Morad and Zuniga stemming from 1999 when Camacho first became principal of the school. The evidence showed that Camacho felt a kinship with both Complainants and had considered both of them to be personal supporters of hers. Camacho had consistently supported both Complainants by allowing them to become unpaid volunteers and then awarding them both for their excellent service by orchestrating their promotion to paid positions. The record supports that Camacho had grown impatient with Complainants' failure to

make a smooth transition from volunteer workers to paid employees and that Camacho was disappointed with their conduct, which Camacho felt was disrupting the orderly functioning of the lunchroom.

The evidence in the record supports that Camacho discharged Complainants because she believed both Complainants to be the cause of the tension in the lunchroom and because she believed that both of them disrespected Santiago and failed to comply with Santiago's directives. As such, I find that the articulated reasons given by Respondent for discharging Complainants were not pretextual.

RECOMMENDATION

Accordingly, I recommend that the Complaint and underlying Charges as to both Complainants be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: September 30, 2009

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section